

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOHN SIMS,

Plaintiff,

v.

WILLIE B. MIXON, Supervisor, Claims
and Inquiry Section, U.S. Postal Service,

Defendant.

No. 4:07-CV-1304 CAS

MEMORANDUM AND ORDER

This matter is before the Court upon its own motion. Plaintiff is proceeding in forma pauperis in this matter. Under 28 U.S.C. § 1915(e)(2)(B)(iii), the Court is required to dismiss an in forma pauperis suit at any time if it “seeks monetary relief against a defendant who is immune from such relief.”

Plaintiff brings this official-capacity suit against an agent of the United States who was acting within the scope of his employment. A lawsuit against a federal employee in his official capacity constitutes a lawsuit against the United States. Kentucky v. Graham, 473 U.S. 159, 165-66 (1985).

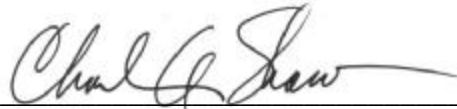
Plaintiff may not maintain an action against the United States unless the United States has waived its sovereign immunity. The United States has waived its sovereign immunity for certain torts in the Federal Torts Claims Act. 28 U.S.C. § 2674. In this case, however, the United States has not waived its sovereign immunity because plaintiff’s cause of action “aris[es] out of the loss, miscarriage, or negligent transmission of letters or postal matter.” 28 U.S.C. § 2680. As a result, defendant is immune from the relief plaintiff seeks, and this case must be dismissed.

Additionally, the Court will dismiss this action with prejudice because plaintiff previously litigated the issues raised in this case in the United States District Court for the Western District of Missouri. Sims v. United States Postal Service, No. 03-512-CV-S-SOW (W.D. Mo.).

Accordingly,

IT IS HEREBY ORDERED that this case is **DISMISSED** with prejudice.

An Order of Dismissal shall accompany this Memorandum and Order.

A handwritten signature in cursive script, reading "Charles A. Shaw", written in dark ink. The signature is fluid and extends to the right with a long horizontal stroke.

CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 29th day of April, 2008.